

REMARKS

Claims 1-26 have been amended to clarify that the cushion comprises a bed cushion.

Additionally, each of the independent claims 1, 27, 49, 50 and 51 have been amended to specify that the cushion is for supporting a person in a sitting position on an upper surface of a bed, that the cushion includes a pair of padded armrests coupled to the back portion, and that the back portion and armrests have lower surfaces for resting on the upper surface of the bed.

Additionally, dependent claims 4 and 32 have been amended to specify that the cushion has a mass and is formed of materials that provide vibration attenuation and isolation to protect filaments in the light source. Support is found in the original specification, for example, at page 6, lines 6-8.

The withdrawal of the previous final rejection is noted with thanks. However, it is believed that the claims, as amended, are patentable over the several new art rejections.

Considering first the rejection of claims 1-4, 9-12, 14, 16-20, 27-33, 37, 39, 40, 47 and 48 as obvious from Tomlinson in view of Rosado (newly cited), the primary reference, Tomlinson is acknowledged prior art that is discussed at length on pages 1 and 2 of the original specification. Tomlinson is quite different. Tomlinson secures his lamp 54 to a collapsible tray 44. This places the lamp and its glare in front of the user.

In rejecting claims as obvious from Tomlinson in view of Rosado, the Examiner acknowledges Tomlinson attaches his lamp to an armrest rather than to the back portion of the bed rest cushion. However, the Examiner takes the position that this missing teaching is supplied by Rosado "since the location is a matter of design for art recognized equivalent." It is submitted the Examiner has employed impermissible hindsight and is applying the missing

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teachings of the present invention to the prior art to make out a case for obviousness. Since Tomlinson already has a light, there would be no reason to look to additional art teachings. The prior art must provide a motivation or reason for the worker in the art, without the benefit of Applicant's specification, to make the necessary changes in the reference device." MPEP 2144.04(IV)(C). In the instant case, no motivation or suggestion is given in either Tomlinson or Rosado to change the location and fixation of the light. Moreover, Rosado, while admittedly a device for sitting, is really quite different. Applicants' claims all are directed to a bed cushion for supporting a person in a sitting position on the upper surface of a bed. Rosado is a lounge chair with legs. One wouldn't put a lounge chair with legs on a bed. Moreover, Rosado doesn't include a massage motor carried in the back portion. Thus, Rosado doesn't have a problem of potential destruction of lamp filaments, as in the case of a bed cushion, as in Applicants' claimed invention in which a massage motor is carried in the back portion, i.e., the same element to which the light source is mounted. Accordingly, it is submitted that with the rejection of claims 1-4, 9-12, 14, 16-20, 27-33, 37, 39, 40, 47 and 48 as obvious from Tomlinson in view of Rosado is in error.

Turning to the rejection of claims 5, 7, 8, 34, 36, 38 and 51 as obvious from Tomlinson in view of Rosado further in view of the newly cited U.S. patent to Schwaegerle, claims 5, 7, and 8 are directly or indirectly dependent on claim 1; claims 34, 36, and 38 are directly dependent on claim 27. Claims 1 and 27, and also claim 51 all include similar requirements as above discussed. It is not seen that the newly cited patent to Schwaegerle supplies the missing teachings to Tomlinson and Rosado to achieve or render obvious any of the claims. Applicants' claims and the primary reference, Tomlinson, are directed to a bed rest cushion. Rosado is

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directed to a combination lounge and study chair. Schwaegerle is directed to an ophthalmic instrument support and lighting system, i.e., a dentist chair. Where is the motivation to combine a bed rest with a living room or study room chair and a dentist's chair? Applicants' claims are all directed to a bed rest, not a living room or study chair, and certainly not a dentist chair. Clearly combining art from the bedroom, living room/study and a dentist office is not what 103 is all about. Thus, the rejection of claims 5, 7, 8, 34, 36, 38 and 51 as obvious from Tomlinson in view Rosado and further in view of Schwaegerle is based on hindsight, and is in error.

The rejection of claims 6 and 35 as obvious from Tomlinson in view of Rosado and Schwaegerle and further in view of Stottmann also in error. Claim 6 is indirectly dependent on claim 1, and claim 35 is indirectly dependent on claim 27. The deficiencies of the combination of Tomlinson, Rosado and Schwaegerle are discussed above. It is not seen that Stottmann supplies the missing teachings to achieve render obvious claim 5 or claim 27, or claims 6 and 35 which depend thereon. Stottmann concerns a dishwasher control panel assembly. Now, the Examiner has combined art from the bedroom with art from the living room/den, a dentist office and the kitchen to make out a case for obviousness. One might ask how many bedrooms have a dishwasher? How many bedrooms have dentist chairs? Thus, once again, the Examiner has gone far afield to non-analogous prior art to make out a case for obviousness. Where is the motivation to combine bed cushion art with a living room/den chair, a dentist chair, and a dishwasher? Clearly the rejection of claims 6 and 35 is error.

Turning to the rejection of claim 13 as obvious from Tomlinson in view of Rosado as applied to claim 10 and further in view of Liang, claim 10 is dependent on claim 1. The deficiencies of the combination of Tomlinson and Rosado vis-à-vis claim 1 are discussed above.

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Liang teaches a massaging pillow designed to be fixed to a chair. Neither Applicants' claims nor Tomlinson nor Rosado relate to detachable cushions. Again, where is the motivation to combine Tomlinson and Rosado and Liang? Moreover, even if one were to combine Tomlinson, Rosado and Liang, one still would achieve the claimed invention.

Turning to the rejection of claims 21-23 and 41-43 as obvious from Tomlinson and Rosado and further in view of Gera, claims 21-23 are directly or indirectly dependent on claim 1, while claims 41-43 are directly or indirectly dependent on claim 27. The dependencies of the combination of Tomlinson and Rosado vis-à-vis claims 1 and 27, respectively, are discussed above. Gera does not supply the missing teachings. Gera is concerned with a sectional modular sofa. Gera's contribution to the art is in the inclusion of one or more wedge-shaped furniture units positioned between the sitting units providing table and storage. Gera has been cited as teaching a chair having a telephone including a base station and handset. Actually, in Gera, the telephone is not part of a chair or sitting unit, but rather a table/storage unit. Clearly, Gera does not supply the missing teachings of the combination of Tomlinson and Rosado to achieve or render obvious claims 1 and 27 or claims 21-23 and 41-43 dependent thereon.

Turning to the rejection of claims 24, 25, 44, 45, 49 and 50 as obvious from Tomlinson in view of Rosado and further in view of Foster, claims 24 and 25 are dependent on claim 1, claims 44 and 45 are dependent on claim 27 and claims 49 and 50 are similar to claim 1 and claim 27. The deficiencies of the combination of Tomlinson and Rosado as applied to claim 1 are discussed above in detail. Foster et al. certainly does not supply the missing teachings as above discussed. Foster et al. is a massager for placing against the back of a seating device, e.g., a car seat. (Now the Examiner combines art from the bedroom, living room/den and the garage!)

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Foster et al. has been cited in teaching a massaging cushion including a bladder and heat source. However, a more basic and essential feature is missing from the combination of Tomlinson and Rosado as above discussed are not supplied by Foster et al. Thus, the rejection of claims 24, 25, 44, 45, 49 and 50 as obvious from Tomlinson in view of Rosado and Foster et al. likewise is in error.

Turning to the rejection of claims 26 and 46 as obvious from Tomlinson in view of Rosado and further in view of Prosser (newly cited), claim 26 is dependent on claim 1 and claim 46 is dependent on claim 27. The deficiencies of the combination of Tomlinson and Rosado vis-à-vis claims 1 and 27, respectively are discussed above. Prosser has been cited as teaching an acoustical chair and thus like Rosado belongs in the living room. Prosser is not a bed cushion, and is not made for resting on the upper surface of a bed. Thus, it is submitted that no combination of Tomlinson, Rosado and Prosser reasonably could be said to achieve or render obvious claims 1 and 27 or claims 26 and 46, which depend thereon.

Finally, turning to the rejection of claims 26 and 46 as obvious from Rosado and Tomlinson in view of Rosado and Gera as supplied in claim 21 and further in view of Guenther, once again, the Examiner has gone far afield from the bedroom to make out case for obviousness. Guenther relates to a cellular telephone hand set for use in a motor vehicle. Again, one might ask oneself why would one skilled in the art, wishing to improve on bed cushions, look to technology for use in the motor vehicle field? Accordingly, it is submitted the Examiner has applied impermissible hindsight in rejecting claims 26 and 46.

As the Examiner has been informed in the earlier prosecution, the subject application has achieved substantial commercial success and has been copied by several competitors. Thus, in

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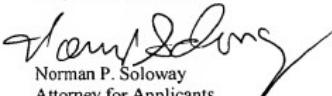
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addition to the various reasons giving above, the significant commercial success and copying are two more reasons in favor of patentability of the subject invention.

Having dealt with all the objections raised by the Examiner, the Application is believed to be in order for allowance. Early and favorable action are respectfully requested.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on September 26, 2003, at Tucson, Arizona.

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